

CR 6570/1998

BEFORE

HON'BLE MR JUSTICE BK SHARMA

Heard Mr C Barua, learned senior counsel assisted by Mr B Barua, learned counsel for the petitioner. Also heard Mr N Bora, learned CGC.

This matter is pending for the last about 15 years. The writ petition was first entertained by order dated 21.12.1998 and the impugned order dated 27.11.1998 is sued by the Brigadier, Station Commander, Panitola/Dinjan was stayed. By the said order finalizing the proceeding under the provisions of Public Premises (Eviction of Unauthorised Occupation) Act, 1971 (in short the PP Act), it was provided that the petitioner and all other occupying the land in question belonging to the Army would vacate the land within 30 days of publication of the order. It was further provided that in the event of failure to do so appropriate action will be taken towards vacating the persons from the land belonging to the Army. In the counter affidavit filed by the respondents on 9.4.1999 i.e. 13 years back , it has been contended that the proceeding was initiated as per the aforesaid Act, 1971. It has further been stated that since the petitioner and others were found in occupation of the Govt/Army land, the impugned order was passed. The petitioner had approached this Court earlier by filing the writ petition being Civil Rule No. 4605/1998 challenging the show cause notice itself issued under Section 4(4) of the aforesaid Act, 1971. The writ petition was disposed of by order dated 11.9.1998 declining to interfere with the show cause notice. The petitioner was directed to respond to the notice with the further observation that in the event of any grievance in respect of the order to be passed by the authority under the aforesaid Act, 1971, it would be open for the petitioner to approach the appellate authority or this Court under Article 226 of the Constitution of India.

Pursuant to the aforesaid order of this Court the petitioner submitted his reply to the show cause notice. Thereafter the authority under the PP Act passed the impugned order dated 27.11.1998 in which it was also stated that the land belongs to Army vide Govt of India, Ministry of Defence, Deptt of Gazette Notification No. 64 dated 28.6.1940 as amended vide order dated 21.11.1942.

Apart from the fact that the aforesaid stand of the respondents in their counter affidavit raised 13 years back has not been denied by the petitioner by filing affidavit-in-reply. The writ petition was also dismissed for default vide order dated 12.5.2005 and the interim order was vacated. However, the writ petition was restored to file by order dated 10.2.2006 and since then the matter is pending for disposal.

Mr C Barua, learned senior counsel for the petitioner submits that the authority which initiating the proceeding under the Act, 1971 being not authorized, the entire proceeding is liable to be interfered with.

On the other hand, Mr N Bora, learned CGC by producing the Notification dated 16.5.1959 published in the Gazette of India submits that the Station Commanders of all Cantonments and Military Stations having been notified to be the Estate Officers, the authority rightly issued the eviction notice and initiated the proceeding thereof.

In view of the above, the ground on which the writ petition is structured does not survive. This position has further been confirmed by the Army Authority by its letter dated 10.6.2013 addressed to the learned CGC. As per the said letter, the Station Commanders of all Cantonments and Military Stations are to act as the Estate Officers for the purpose of the Act in respective stations.

If the petitioner is in occupation of the Govt/Army land and the authority empowered in this regard initiated the proceeding in question under the aforesaid Act, 1971 and passed the impugned order providing reasonable opportunity of being heard to the petitioner, no fault can be attributed to the respondents.

In view of the above, I do not find any merit in the writ petition and accordingly it is dismissed.

At this stage, Mr Barua, learned counsel for the petitioner by producing the copy of the rejoinder affidavit purportedly filed against the affidavit-in-opposition about which mention has been made above.

On perusal of the said copy it is not discernable as to when the same was filed as the same is undated and without any endorsement.
Be that as it may, in view of my aforesaid finding irrespective of filing reply affidavit or not, the writ petition is liable to be dismissed which I accordingly do.
The interim order passed on 22.12.1998 stands vacated.